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February 12, 2004

RECEIVED

FEB 13 2004

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Joint Request for Approval of Settlement Agreement  
MM Docket No. 02-76, RM-10405, RM-10499

Dear Ms. Dortch:

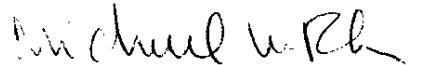
Enclosed please find a joint request for approval of a settlement agreement in the following docketed proceeding:

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations  
(Crisfield, Maryland, Belle Haven, Cape Charles, Nassawadox, Exmore and  
Poquoson, Virginia), MM Docket No. 02-76, RM-10405, RM-10499.

In addition to the original request, we have also enclosed four additional copies for Commission use, as required by 47 C.F.R. § 1.419, together with a return copy for our records. Please provide a date stamp on the return copy.

Many thanks for your kind attention.

Sincerely,



Howard M. Weiss

Michael W. Richards

*Counsel for Commonwealth Broadcasting, L.L.C.,  
and Sinclair Telecable, Inc.*

Enclosures

cc: Gary S. Smithwick, Esq.  
Mr. Robert Sinclair  
Mr. David Sinclair  
Lisa Scanlan, Esq. (via facsimile and e-mail)

No. of Copies rec'd at 4  
List A B C D E

Before the  
**Federal Communications Commission**  
Washington, DC 20554

**RECEIVED**

FEB 13 2004

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 02-76
Table of Allotments	)	RM-10405
FM Broadcast Stations	)	RM-10499
(Crisfield, Maryland, Belle Haven, Cape	)	
Charles, Nassawadox, Exmore and Poquoson,	)	
Virginia)	)	

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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To: Assistant Chief, Audio Division, Media Bureau

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Pursuant to 47 C.F.R. §1.420 of the Commission's Rules, Sinclair Telecable, dba Sinclair Communications and its affiliate, Commonwealth Broadcasting, LLC, licensees of Stations WROX-FM, Cape Charles, and WKOC, Exmore, Virginia (collectively "Sinclair") and Tidewater Communications, LLC ("Tidewater"), request that the Commission:

- (1) approve the settlement agreement included as Exhibit 1 hereto; and
- (2) dismiss Tidewater's petition for reconsideration ("Tidewater Petition") of the FCC's adoption of Sinclair's counterproposal in these proceedings (Report and Order, *Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawaddox, and Poquoson, Virginia*, DA 03-2980, released Sept. 29, 2003) (the "Report and Order").

Approval of the Agreement and dismissal of the Tidewater Petition, in conjunction with approval of a separate request for a joint settlement agreement to withdraw Tidewater's informal objections, filed on January 13, 2004, against Sinclair's applications for minor modification of

the licenses of Stations WROX-FM and WKOC to implement the Report and Order<sup>1</sup>, will constitute resolution of this dispute between the parties.

A grant of this Joint Request will serve the public interest because it will conserve the scarce resources of the Commission and the parties, and expedite the initiation of first local transmission service to Poquoson, Virginia.

Pursuant to Sections 1.420 of the Commission's Rules, both parties hereto have executed declarations stating: (a) why the settlement agreement included as Exhibit 1 hereto is in the public interest; (b) that each party's respective applications and/or pleadings were not filed for the purpose of reaching or carrying out the settlement agreement; (c) that neither Tidewater nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for dismissal of the Tidewater Petition and the informal objections, and neither Sinclair nor its principals has offered to pay or will pay any money or other consideration in excess of legitimate and prudent expenses in exchange for dismissal of the Tidewater Petition and informal objections; (d) that the settlement agreement, attached hereto as Exhibit 1, reflects the consideration that Tidewater will receive in return for dismissal of the Tidewater Petition and informal objections; (e) that no other oral agreement creates any terms different than stated in the written instrument attached hereto as Exhibit 1; and (f) an itemized accounting of the expenses for which Tidewater seeks reimbursement. These declarations are included as Exhibits 2 and 3, hereto.

Although FCC rules do not require these declarations as a prerequisite to the proposed withdrawal of the Tidewater Petition, insofar as Commission rules place no explicit restrictions on settlement agreements involving reconsideration petitions in allotment proceedings, the

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<sup>1</sup> FCC File Nos. BPH-20031202AAU and BPH-20031202AAZ.

parties believe that declarations pursuant to Rule 73.3525 are appropriate in this request for Commission approval of the agreement to dismiss the Tidewater Petition. Such an interpretation comports with the policy underlying the Commission's certification requirements. *See, e.g., Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911 (1990).

WHEREFORE, for the reasons stated, Sinclair and Tidewater respectfully request that the Commission approve the attached settlement agreements and dismiss the Tidewater Petition.

Respectfully submitted,  
**Commonwealth Broadcasting, L.L.C., and  
Sinclair Telecable, Inc.**

By: Michael W. Richards .  
Howard M. Weiss  
Michael W. Richards  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1700 North 17th Street, 11th Floor  
Arlington, VA 22209  
(703) 812-0400  
Its Attorneys

**Tidewater Communications, LLC**

By: Gary S. Smithwick (MWR)  
Gary S. Smithwick  
SMITHWICK & BELENDIUK, P.C.  
5028 Wisconsin Ave., NW  
Washington, D.C. 20016  
(202) 363-4560  
Its Attorney

February 13, 2004

## **EXHIBIT 1**

## **SETTLEMENT AGREEMENT**

This Agreement dated this 12th day of February, 2004.

WHEREAS, Sinclair Telecable, Inc., dba Sinclair Communications and its affiliate, Commonwealth Broadcasting, LLC, licensees of Stations WROX-FM, Cape Charles, Virginia (FCC Facility ID No. 60479), and WKOC, Exmore, Virginia (FCC Facility ID No. 78447) (collectively "Sinclair") have filed and the Federal Communications Commission (the "FCC") has adopted a counterproposal to amend the FM Table Allotments in Report and Order, Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawaddox, and Poquoson, Virginia, DA 03-2980, released September 29, 2003;

WHEREAS, Tidewater Communications, LLC ("Tidewater"), licensee of Station WNOR, Norfolk, Virginia, opposed adoption of the counterproposal and has petitioned for reconsideration of the Report and Order, which petition is currently pending;

WHEREAS, Sinclair has filed applications for minor modification of the licenses of Stations WROX-FM and WKOC to implement the Report and Order (BPH-20031202AAU and BPH-20031202AAZ) to relocate WROX-FM to Exmore and WKOC to Poquoson, Virginia;

WHEREAS, Tidewater has objected to grant of those applications and they remain currently pending;

WHEREAS, Sinclair has filed an application for a construction permit for a new FM translator to rebroadcast Station WROX-FM in Norfolk, Virginia (BNPFT-20030317ECQ) that remains currently pending (collectively with the WROX-FM and WKOC applications, "Sinclair's applications"); and

WHEREAS, the parties desire to resolve their differences in order to terminate the litigation described in the preceding "WHEREAS" provisions, facilitate expedited grant of Sinclair's applications, and bring new FM service to underserved communities, thereby conserving scarce FCC resources and the resources of the parties, and serving the public interest.

The premises considered, for valuable consideration, receipt of which hereby is acknowledged, the parties agree as follows:

1. Joint Request for Approval of Settlement Agreement to FCC. The parties agree to cooperate in promptly filing, no later than three days after execution hereof, joint requests for FCC approval of this Agreement, dismissal of Tidewater's petitions and pleadings, and grant of Sinclair's applications (the "approval"), including any and all documentation required or requested by the FCC. Neither party, nor its agents or affiliates, direct or indirectly, shall omit to take any action which would facilitate the approval, or take any action which would impede or delay the approval. Each party shall bear its own expenses for the preparation and prosecution of the Joint Requests.

2. Consideration. In return for Tidewater's willingness to dismiss its pleadings seeking reconsideration of the Report and Order and denial of Sinclair's applications, Sinclair shall:

(a) pay to Tidewater by wire transfer the amount of TWENTY EIGHT THOUSAND FOUR HUNDRED FIFTY DOLLARS AND THIRTY FOUR CENTS (\$28,450.34) (the "Settlement Amount") pursuant to written instructions from Tidewater within five days after all of the following have occurred: (1) FCC approval of the Joint Requests; (2) dismissal of Tidewater's petitions and pleadings; (3) denial of reconsideration of the Report and Order; and (4) grant by final order of Sinclair's applications. For the purposes of this Agreement, "Final Order" means FCC action that is no longer subject to timely FCC or judicial reconsideration, review or appeal. The date of Sinclair's payment shall be known as the "Effective Date"; and

(b) agree not to utilize on Sinclair's station operating on 106.1 MHz at Poquoson, Virginia (Facility ID No. 78447), a rock format for a period of two (2) years from the Effective Date hereof. For the purposes of this Agreement, "rock format" shall mean a format that would commonly be defined by music trade publications (e.g., Radio and Records) as such, including heritage, active, alternative or classic rock. Without limiting the foregoing general prohibition, for example, Sinclair will not broadcast on the Poquoson station for two years from the Effective Date the format currently broadcast by WROX-FM, Facility ID No. 60479, at Cape Charles or Exmore, Virginia. In the event of a dispute between the parties with respect to Sinclair's performance under this sub-paragraph, the



party claiming a breach of this Agreement shall give notice in writing to the other party. Upon receipt of such notice, the parties shall attempt to resolve the dispute through informal negotiations for a period of ninety days. If no resolution is reached within that period, the dispute shall be submitted to binding arbitration by a nationally recognized music consultant at his or her offices under the rules of the American Arbitration Association. The consultant shall not have performed any services for either party or any of its affiliated companies. The consultant will be selected by Elliot Evers of Media Venture Partners. In the event either party is dissatisfied with the arbitrator selected by Mr. Evers, the dissatisfied party shall give written notice to the other party and each party shall select its own arbitrator and the two arbitrators so selected shall select a third arbitrator. The majority vote of the arbitrators so selected on the format issue shall be binding and final. Expenses for the arbitration shall be split equally by the parties, provided that the party who prevails in the arbitration shall be reimbursed for its share upon conclusion of the arbitration.

(c). Upon execution of this Agreement, Sinclair shall deposit the Settlement Amount in an interest bearing escrow account with the law firms of Smithwick and Belendiuk, P.C., and Fletcher, Heald and Hildreth, PLC, as joint Escrow Agents pursuant to the Escrow Agreement attached as Exhibit A. The Escrow Agents shall pay the Settlement Amount to Tidewater on the Effective Date without being required to obtain further escrow instructions from either party.

3. Integration. This Agreement constitutes the entire agreement between the parties on the subjects addressed. No modification or revision to this Agreement shall be effective unless it is accomplished by written amendment, executed by both parties.

4. Choice of Law. This Agreement shall be controlled by the law of the Commonwealth of Virginia, but not its conflicts of law principles.

5. Headings. The headings herein are for descriptive purposes only, and have no substantive effect.

6. Assignment. This Agreement shall be binding on the parties' assigns, successors and heirs. Neither party may assign the Agreement without the other party's consent, which shall not be unreasonably withheld.

7. No Presumptions Regarding Interpretation. This Agreement shall be interpreted without resort to any presumptions derived from the identity of the author hereof.

8. Termination. This Agreement shall terminate on the second anniversary of the Effective Date, provided that it shall also be terminable by written notice under the following circumstances:

(1) by Sinclair, if it is not then in default, should Tidewater commit a material default under the Agreement;

(2) by Tidewater, if it is not then in default, should Sinclair commit a material default under the Agreement;

9. Remedies. Subject to the arbitration provision in Section 2(b), above, in addition to all other remedies available at common law, the parties understand and acknowledge that Sinclair and Tidewater shall have available to them equitable relief to

enforce each other's obligations. The subject matter of this undertaking is unique and Sinclair and Tidewater would be irreparably harmed by Tidewater's failure to comply with this obligation on a timely basis or Sinclair's violation of the provisions of Section 2(b) hereof. Tidewater and Sinclair acknowledge, therefore, that monetary damages would be inadequate and agree that neither will object to specific performance under these circumstances.

10. Time. Time is of the essence hereunder.

11. Warranties. The parties warranty and represent to each other that:

(1) Each has taken all necessary corporate or limited liability company action to authorize the undertakings herein;

(2) The representatives executing this Agreement below are authorized to act on behalf of the parties;

(3) Each is in good standing and authorized to do business in the Commonwealth of Virginia; and

(4) There is no pending court or governmental agency proceeding or action, nor contract, agreement or undertaking, which prevents or impedes either party from undertaking the obligations in this Agreement.

12. Notice. Where notice is required or appropriate under this Agreement, it shall be considered given, if sent by telecopy transmission or overnight delivery as follows:

If to Sinclair, to:

Mr. J. David Sinclair  
6158 Yellow Birch Court  
Avon, IN 46123  
Fax: (317) 838-7225

If to Tidewater, to:

Mr. Samuel D. Bush  
73 Kercheval Avenue  
Grosse Pointe Farms, MI 48236  
Fax: (313) 886-7150

And

Mr. David Paulus  
870 Greenbrier Circle  
Suite 399  
Chesapeake, VA 23320  
Fax: (757) 366-0022

13. Counterparts. This Agreement may be signed in counterparts, and shall be effective as if executed on the same document.

WHEREFORE, the premises considered, the parties have executed this Agreement and it will be effective on the date above specified.

SINCLAIR TELECABLE, INC.

By:   
J. David Sinclair

COMMONWEALTH BROADCASTING, LLC

By:   
J. David Sinclair

TIDEWATER COMMUNICATIONS, LLC

By: \_\_\_\_\_  
Samuel D. Bush, Treasurer

If to Tidewater, to:

Mr. Samuel D. Bush  
73 Kercheval Avenue  
Grosse Pointe Farms, MI 48236  
Fax: (313) 886-7150

And

Mr. David Paulus  
870 Greenbrier Circle  
Suite 399  
Chesapeake, VA 23320  
Fax: (757) 366-0022

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By: \_\_\_\_\_  
J. David Sinclair

COMMONWEALTH BROADCASTING, LLC

By: \_\_\_\_\_  
J. David Sinclair

TIDEWATER COMMUNICATIONS, LLC

By: Samuel D. Bush  
Samuel D. Bush, Treasurer

## **ESCROW AGREEMENT**

This Escrow Agreement is made and entered into this 12th day of February, 2004, by and between Tidewater Communications, LLC, ("Tidewater"), Sinclair Telecable, Inc., dba Sinclair Communications and its affiliate, Commonwealth Broadcasting, LLC (jointly herein "Sinclair"), and Gary S. Smithwick, Esq., and Howard M. Weiss, Esq. ("Escrow Agents").

## **WITNESSETH**

WHEREAS, Tidewater and Sinclair are parties to a certain Settlement Agreement dated February 12, 2004 ("Agreement"); and

WHEREAS, Section 2(c) of the Agreement provides that Sinclair has agreed to deposit the sum of \$28,450.34 (the "Escrowed Funds") with the Escrow Agents, to be held and subsequently to be disbursed in accordance with the terms set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises and in consideration of the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. Concurrently with the execution of this Agreement, Sinclair has delivered to the Escrow Agents the Escrowed Funds.
2. The Escrow Agents shall deposit the Escrowed Funds in an interest bearing insured account and will act hereunder as a depository only and is not a party to or bound by the Agreements or any other agreement, document or understanding to which Tidewater and Sinclair are parties except this agreement and are not responsible or liable in any manner for the sufficiency, correctness, genuineness or validity of any of the agreements or documents existing between Tidewater and Sinclair, and the Escrow Agents undertake no responsibility or liability for the form and execution of such agreements and documents or the identity, authority, title or rights of any person executing any such agreements and documents.
3. Unless the Escrow Agents receive written notice as set forth below prior to the Effective Date, the Escrow Agents shall disburse the Escrowed Funds and accrued interest thereon to Tidewater upon the Effective Date as defined in the Agreement, provided, however:
  - (a) Should the Escrow Agents be served with a joint notice from Tidewater and Sinclair directing them to pay the Escrowed Funds to Tidewater, then the Escrow Agents shall, upon receipt of such notice forward the Escrowed Funds Tidewater with the interest earned thereon to Sinclair.
  - (b) Should the Escrow Agents receive a joint notice from Tidewater and Sinclair stating that the Escrowed Funds are to be returned to Sinclair, then the Escrow Agents shall return the Escrowed Funds, together with all interest earned thereon, to Sinclair.
  - (c) Should the Escrow Agents receive a notice from Tidewater or Sinclair stating that the Escrowed Funds should be distributed for any reason other than by mutual

agreement or because the Effective Date has elapsed, they will make no distribution of the Escrowed Funds unless and until (i) they receive a joint notice, signed by both Tidewater and Sinclair containing instructions as to the disposition of the Escrowed Funds or (ii) they are instructed by an arbitrator or a court of competent jurisdiction which has resolved the dispute between the parties.

(d) Notwithstanding the foregoing, the Escrow Agents shall comply with any instructions signed by both Tidewater and Sinclair concerning disposition of the Escrowed Funds.

4. In the event a notice is served upon the Escrow Agents pursuant to Paragraph 3(c) above, then the Escrow Agents may, at their sole option, (a) continue to hold the Escrowed Funds and collect and deposit all interest earned thereon or (b) advise all parties of the filing of an interpleader action in the United States District Court whereupon the Escrow Agents shall then promptly file the interpleader action and place the Escrowed Funds in the registry of the Court. Tidewater and Sinclair jointly and severally agree to pay the Escrow Agents' costs which, if so ordered by a court, may include reasonable attorney's fees which the Escrow Agents may expend or incur in such interpleader suit, the amount of such costs to be fixed and judgment therefor to be rendered by the Court in such suit. Upon the filing of the interpleader action and the payment of the Escrowed Funds into the registry of the United States District Court, the Escrow Agents shall be fully released and discharged from all obligations imposed on them in this Agreement.

5. The Escrow Agents undertake to perform such duties as are specifically set forth herein and may conclusively rely, and shall be protected in acting or refraining from acting, on any written notice, instrument or signature believed by them to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so. The Escrow Agents shall have no responsibility for the contents of any writing contemplated herein and may rely without any liability upon the contents thereof.

6. The Escrow Agents' liability under this Agreement shall be confined to the things specifically provided for herein. The Escrow Agents shall not be liable for any action they may in good faith take or refrain from taking in connection herewith, believed by them to be authorized or within the rights and powers conferred upon them by this Agreement, and may consult with counsel of their own choice and shall have full and complete authorization and protection for any action taken or suffered by them hereunder in good faith and in accordance with the opinion of such counsel and shall not be liable for any mistake of fact or error of judgement or for any acts or omissions of any kind unless caused by their own misconduct or gross negligence.

7. The Escrow Agents may resign at any time by giving 30 days' prior notice thereof to Tidewater and Sinclair, and upon providing Tidewater and Sinclair with evidence that substitute Escrow Agents, reasonably acceptable to Tidewater and Sinclair, have agreed to all of the terms and conditions of this Agreement and agree to be bound hereunder.

8. All notices to the Escrow Agents as required or provided for herein shall be made in writing and served on each other party hereto in the manner specified in the Agreement and to the Escrow Agents at:

Gary S. Smithwick, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, DC 20016

Howard M. Weiss, Esq.  
Fletcher, Heald and Hildreth, PLLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209-3801

or at such other address as the Escrow Agents may subsequently designate by written notice to each other party hereto and shall be sent by registered or certified mail, return receipt requested.

9. The Escrow Agents shall not charge a fee for their services hereunder. The Escrow Agents shall be reimbursed for all reasonable expenses and disbursements incurred or made by them in performance of their duties hereunder; any such expenses and disbursements shall be paid one-half by Sinclair and one-half by Tidewater.

10. This Escrow Agreement shall be construed by and governed in accordance with the substantive law of the State of Virginia.

11. This Escrow Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

12. This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

13. This Escrow Agreement shall automatically terminate upon the distribution of the Escrowed Funds in accordance with Paragraph 3 hereof.

\* \* \* \* \*

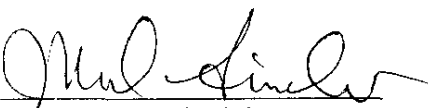


**IN WITNESS WHEREOF**, the parties hereto have caused this Escrow Agreement to be executed on the day and year first above written.

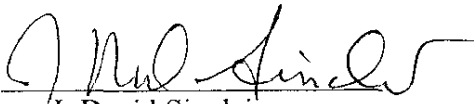
**TIDEWATER COMMUNICATIONS, LLC**

By \_\_\_\_\_  
Samuel D. Bush  
Treasurer

**SINCLAIR TELECABLE, INC.**

By:   
J. David Sinclair

**COMMONWEALTH BROADCASTING, LLC**

By:   
J. David Sinclair

**ESCROW AGENTS**

By \_\_\_\_\_  
Gary S. Smithwick

By \_\_\_\_\_  
Howard M. Weiss

**IN WITNESS WHEREOF**, the parties hereto have caused this Escrow Agreement to be executed on the day and year first above written.

**TIDEWATER COMMUNICATIONS, LLC**

By \_\_\_\_\_  
Samuel D. Bush  
Treasurer

**SINCLAIR TELECABLE, INC.**

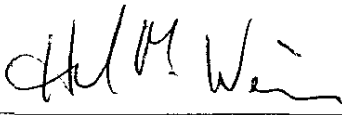
By: \_\_\_\_\_  
J. David Sinclair

**COMMONWEALTH BROADCASTING, LLC**

By: \_\_\_\_\_  
J. David Sinclair

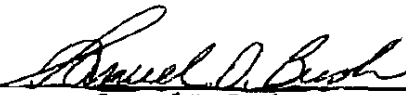
**ESCROW AGENTS**

By \_\_\_\_\_  
Gary S. Smithwick

By \_\_\_\_\_  
  
Howard M. Weiss

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed on the day and year first above written.

**TIDEWATER COMMUNICATIONS, LLC**

By   
Samuel D. Bush  
Treasurer

**SINCLAIR TELECABLE, INC.**

By   
J. David Sinclair

**COMMONWEALTH BROADCASTING, LLC**

By   
J. David Sinclair

**ESCROW AGENTS**

By   
Gary S. Smithwick

By \_\_\_\_\_  
Howard M. Weiss

## **EXHIBIT 2**

**DECLARATION UNDER PENALTY OF PERJURY**

I, J. David Sinclair, under penalty of perjury and pursuant to 47 C.F.R. § 1.16 and 47 C.F.R. § 73.3588 and/or 47 C.F.R. § 73.3525, do hereby declare that:

1. I am president of Sinclair Telecable, dba Sinclair Communications, and managing member of its affiliate, Commonwealth Broadcasting, LLC, licensees of Stations WROX, Exmore, Virginia, WKCK, Chesapeake, Virginia, and WKOC, Poquoson, Virginia (collectively "Sinclair"), the applicant for minor modifications of stations WROX and WKOC (FCC File Nos. BPH-20031202AAU and BPH-20031202AAZ), which would implement the FCC's adoption of Sinclair's allotment counterproposal (Report and Order, *Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawaddox, and Poquoson, Virginia*, DA 03-2980, released Sept. 29, 2003) (the "Report and Order");

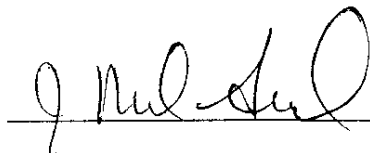
2. The settlement agreement attached as Exhibit 1 (the "Agreement") to the Joint Request for Approval of Settlement (the "Joint Request") would serve the public interest because it will facilitate the station licensing process, conserve the scarce resources of the Commission and the parties, and expedite the initiation of first local transmission service to Poquoson, Virginia;

3. Sinclair's applications and pleadings in the rule making and for the modifications were not filed for the purpose of reaching or carrying out the Agreement or any agreement with any other party regarding the dismissal or withdrawal of any application or pleading related to the Report and Order or the rule making proceeding;

4. The Agreement, reflecting consideration of \$28,450.34, to resolve disputes arising from the aforementioned proceedings, and other agreements referenced therein, are the only agreements, written or oral, in connection with this dispute between or among the parties to the Agreement;

5. Neither Sinclair nor its principals have paid or promised to pay any money or other consideration or reimbursement of expenses for Tidewater's undertakings except as expressly set forth in the Agreement.

Date 2/12/04

  
\_\_\_\_\_

## **EXHIBIT 3**

**DECLARATION**

I, David Paulus, under penalty of perjury, do hereby declare that:

1. Tidewater Communications, LLC has incurred legitimate and prudent expenses of at least \$28,450.34 in connection with its participation in the FCC's rule making proceeding in MM Docket No.02-76 and in connection with its preparation and prosecution of informal objections to the related minor modifications of the licenses of Stations WROX and WKOC in FCC File Nos. BPH-20031202AAU and BPH-20031202AAZ, which would implement the aforementioned report and order. In these pursuits, Tidewater has expended legal fees totaling \$25,805.34, related engineering fees totaling \$2,110, and expert witness fees totaling \$535. Our law firm, Smithwick & Belendiuk, P.C., and our engineering firm, Bromo Communications, Inc., are providing statements attached hereto to substantiate the charges.

2. The settlement agreement attached as Exhibit 1 (the "Agreement") to the Joint Request for Approval of Settlement (the "Joint Request") would serve the public interest because it will facilitate the station licensing process, conserve the scarce resources of the Commission and the parties, and expedite the initiation of first local transmission service to Poquoson, Virginia;

3. Tidewater's pleadings in the rule making and the informal objections to Sinclair's applications for modifications were not filed for the purpose of reaching or carrying out the Agreement or any agreement with any other party regarding the dismissal or withdrawal of any application or pleading related to the Report and Order or the rule making proceeding;

4. The Agreement, reflecting consideration of \$28,450.34, to resolve disputes arising from the aforementioned proceedings, and other agreements referenced therein, are the only agreements, written or oral, in connection with this dispute between or among the parties to the Agreement;

5. Neither Tidewater nor its principals have been paid or promised any money or other consideration or reimbursement of expenses for Tidewater's undertakings except as expressly set forth in the Agreement.

Tidewater Communications, LLC

By: 

David Paulus  
Vice President

Date: February 12, 2004.

**CERTIFICATE OF SERVICE**

I, Evelyn M. Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that a true copy of the Joint Request for Approval of Settlement Agreement was sent on this 13th day of February 2004, via first class U.S. mail, postage prepaid to the following:

Mark N. Lipp, Esquire  
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Evelyn M. Thompson

February 13, 2004